



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of
GEORGE MARMAROPOULOS ET AL
Serial No. 10/043,379
Filed: **OCTOBER 26, 2001**
PORTABLE SIGNAL ACTIVATOR ASSEMBLY

Atty. Docket
US010544
Group Art Unit: **2636**
Examiner: **ANH V. LA**


Commissioner for Patents
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BOX APPEAL BRIEF - PATENTS

Sir:

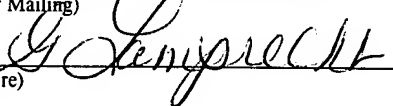
Enclosed is an Appeal Brief in the above-identified
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Respectfully submitted,

By 
David Barnes, Reg. No. 47,407
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

Atty. Docket

CORNELIS W. A. M. VAN OVERVELD

NL000465

Serial No. 09/933,782

Group Art Unit: 2121

Filed: AUGUST 21, 2001

Examiner: JOSEPH P. HIRL

Title: METHOD AND SYSTEM FOR GENERATING A RECOMMENDATION FOR A
SELECTION OF A PIECE OF CLOTHING

Commissioner for Patents
Alexandria, VA 22313

NOTICE OF APPEAL

Sir:

Applicants hereby appeal to the Board of Patent Appeals
and Interferences from the decision dated October 8, 2004 of the
Examiner finally rejecting claims 1-25.

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[] No additional fee is required, because the
fee was paid in a prior appeal.

Respectfully submitted,

12/16/2004 DEMMANU1 00000018 141270 09933782

01 FC:1401 500.00 DA

By Gregory L. Thorne
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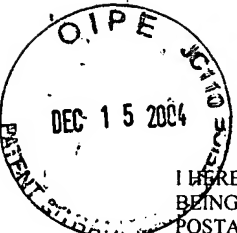
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In the Application of: George Marmaropoulos et al.)

Serial No.: 10/043,379)

Group Art Unit: 2636

Filing Date: October 26, 2001)

Examiner: Anh V. La

For: PORTABLE SIGNAL)
ACTIVATOR ASSEMBLY)

Dated at Briarcliff Manor, New York, this 13 day of December 2004.

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

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12/16/2004 DEMMANU1 00000019 141270 10043379
01 FC:1402 500.00 DA

I. INTRODUCTION

In accordance with the provisions of 35 U.S.C. § 134 and 37 C.F.R. §§ 1.191 and 1.192, this Appeal Brief is submitted in triplicate in support of the appeal from the Office action dated August 10, 2004, finally rejecting claims 1-10.

A. Real Party In Interest

Appellant(s) have assigned their interests in the subject application to U.S. Philips Corporation.

B. Related Appeals and Interferences

None.

II. STATUS OF THE CLAIMS

A. Status of Pending Claims

Claims 1-10 have been finally rejected under 35 U.S.C. § 103, and each claim is on appeal.

B. Status of Canceled Claims

No canceled claims.

III. STATUS OF THE AMENDMENTS

There were no amendments filed subsequent to the final rejection of this application. Appellant(s) filed a Response to Office Action (Final Rejection) under 37 C.F.R. § 1.116 on September 29, 2004, offering arguments to overcome the rejection. An Advisory Action was then issued stating that Appellant(s) arguments contained in the response failed to place the application in condition for allowance.

IV. SUMMARY OF THE INVENTION

Appellant(s) claimed invention is directed to an apparatus and method in which a garment of desired form and function includes one or more switches/activators positioned in a waterproof or otherwise protected enclosure that permits easy activation by pressure or touch transmitted through the garment material so as to effectuate a means for signaling. In an exemplary embodiment of the claimed invention, the garment incorporates one or more pressure sensitive pad switches and at least one portable signal-transmitting device. In addition, the garment, in an illustrative aspect of the claimed invention, includes pockets or other accessible enclosures on the outer surface of the garment and suitable for engaging and supporting necessary ancillary equipment such as a portable signaling device and/or a primary or secondary power source (e.g., battery pack). Further, in another illustrative aspect of the claimed invention, a connection means is provided that extends from a switch/activator and through the material fabric of the garment to serve, for example, as a coupling to a removable signaling device.

At least one advantage of the presently claimed invention is found in providing individuals with readily accessible, easily operated and/or optimally located signaling means (e.g., emergency signaling means) operatively incorporated into a comfortable wearable garment.

One or more signal operators, such as a pressure-sensitive, momentary-contact pad switches, in protected but readily accessible locations in the structure of the wearable garment are advantageously utilized.

V. ISSUE ON APPEAL

Whether claims 1-10 are properly rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 4,860,364 to Giannini (the “Giannini patent”) in view of U.S. Patent No. 4,539,700 to Sato (the “Sato patent”).

VI. GROUPING OF CLAIMS

The claims on appeal before the Board of Patent Appeals and Interferences are claims 1-10. Claims 1-6 relate to a portable signal activator apparatus and claims 7-10 relate to a method of activating a portable removable signaling device.

All of the claim(s) on appeal are set forth in the Appendix, and the independent claims 1 and 7 are set forth below:

1. A portable signal activator comprising:
 - a wearable garment having a body structure;
 - a pressure-sensitive electrical activator switch mounted to the body structure of said garment and capable of activating a removable signaling device; and,
 - a connection means extending from the electrical activator switch through a material fabric of the wearable garment to serve as a coupling to the removable signaling device.

* * * * *

7. A method for permitting a person to activate a portable removable signaling device conveniently, said method comprising the steps of:

coupling a pressure-sensitive activator switch to said removable signaling device through a material fabric of a wearable garment;

mounting both the removable signaling device and said switch to a wearable garment;

dressing said person in said wearable garment; and,

positioning said switch on said garment within easy reach of said person wearing said garment.

Pursuant to 37 C.F.R. § 1.192(c)(7), Appellant(s) hereby groups the pending claims for purposes of appeal as follows:

Claims 1-10 stand rejected under 35 U.S.C. § 103 over the Giannini patent in view of the Sato patent	The rejected claims do not all stand or fall together. As set forth in the Argument below, claims 4-6, 9 and 10 are each separately patentable.
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VII. ARGUMENT

Claims 1-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Giannini patent in view of the Sato patent.

With respect to independent claim 1, from which claims 2 through 6 depend, the Examiner argues that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Giannini's sound generating apparatus, which apparatus is in the form of a garment having flexible switches (16-26, 50) connected by leads (52(a), 52(b)) to a main control circuit (28) providing output signals, so as to include Sato's lead wires (9 or 101,

102), which wires are arranged on the inside of a vest (1). (Final OA, part 3, p. 2). In addition, with respect to independent claim 7, from which claims 8 through 10 depend, the Examiner, in essence, contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to include Sato's lead wires (9 or 101, 102), which wires extend from a base member (6) running between the a surface cloth (11) and a lining (12) of the vest (1) to accessory components (8), e.g., a power source, an amplifier, and/or speakers (41, 42), in Giannini's sound generating method/apparatus. (Final OA, part 3, p. 3). The Examiner's grounds for rejecting both claims 1 and 7 are hereinafter traversed, and reconsideration is respectfully requested.

To establish a prima facie case of obviousness, the following criteria must be met: (1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine the teachings of the references; (2) There must be a reasonable expectation of success found in the prior art, not the Appellant(s) disclosure; and (3) The prior art references must teach or suggest all of the claim limitation(s). M.P.E.P. § 2142. "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." M.P.E.P. § 2141.02, citing W.L. Gore & Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983), cert. denied, 496 U.S. 851 (1984).

A. There Is No Suggestion Or Motivation In The Prior Art To Modify The Lead Wire Arrangement Of The Giannini Patent To Adopt A Lead Wire Arrangement Of The Sato Patent.

The Giannini patent is directed to a sound generating outer garment including switches and a sound generating circuit. The switches are connected to the sound generating circuit, and

both the switches and the sound generating circuit are mounted in the garment. In pertinent part, the Giannini patent suggests and/or discloses “[a] flexible switch 50 includes leads 52a and 52b and an outer cover 54. The switch 50 also includes a flexible and conductive outer lamina or layer 56 and a flexible and insulating outer lamina or layer 58”. (col. 4, lns. 55-59). Further, the Giannini patent suggests and/or discloses that “lead 52a is connected to wires 66, while lead 52b is connected to the conductive outer layer 56”. (col. 4, ln. 68 and col. 5, lns. 1-2). Moreover, the Giannini patent specifically teaches that the components of the disclosed sound generating suit are “entirely within the suit” (col. 3, lns. 54-55) and that the switches (16-26, 50) “provide input signals to the main control circuit 28, and the main control circuit 28 provides output signals to an amplifier 34, which drives right and left speakers 36 and 38, respectively, and a transmitter 40.” (col. 3, lns. 55-59).

Giannini et al. specifically identified the following intended objectives of their suggested/disclosed sound generating apparatus/method: (i) “provide musical or sound generating outerwear that reliably produces musical sounds in response to the movements of the wearer” (col. 1, lns. 62-65); (ii) “provide a sound generating outer garment in which the circuitry for detecting bodily movements and the circuitry for producing musical sounds are mounted *entirely within the garment*” (emphasis added) (col. 1, lns. 67-68 and col. 2, lns. 1-2); and (iii) “to provide a switch adapted for use in a sound generating outer garment that can be easily controlled and actuated by the wearer of the garment” (col. 2, lns. 4-6).

The Sato patent, distinct from the Giannini patent, is directed to a portable audio device including a garment with accessible pockets, a speaker in shoulder portions of the garment, audio components, e.g., a tape recorder, accommodated in the accessible pockets, and lead wires

connecting the audio components with the speakers. More particularly, the Sato patent suggests and/or discloses a vest having a first “[kangaroo type] pocket 31...provided with a base member 6 having a docking terminal 61 therein” (col. 2, lns. 44-50). According to the Sato patent, a tape recorder, i.e., a portable audio device, can be operated on the upper surface of the base member. The Sato patent further suggests and/or discloses a second “pocket 32...equipped with accessory components 8 including a power source of the cell type, an amplifier and the like” (col. 2, lns. 52-55). The accessory components (8) and speakers (41, 42), as taught by Sato, are respectively connected to the base member (6) via lead wires (9) and lead wires (101, 102) arranged inside the vest (1).

Thus, at least from the foregoing, it is clear that the Sato patent, which teaches connecting an audio component accommodated by an accessible pocket of a garment to speakers and a power source via lead wires arranged inside the garment, does not address the problem of connecting elements of a flexible switch, e.g., conductive projections, conductive layers, wires, etc., mounted entirely within the garment to other components, e.g., control circuits, amplifiers, speakers, etc., also mounted entirely within the garment. The reverse is also true. That is, the lead wire arrangement disclosed or suggested in the Giannini patent, which is specifically adapted for connecting conductive elements of a switch mounted or fixed entirely within a garment to other components also mounted or fixed entirely within the garment, does not address problems associated with connecting an external audio component to speakers and/or a power source associated with a garment.

Accordingly, it is respectfully submitted that, notwithstanding the Examiner’s assertions, there is no suggestion or motivation in either reference to modify the lead wire arrangement of

the Giannini patent to employ the lead wire arrangement of the Sato patent. Why would one of ordinary skill in the art want to adopt the lead wire, hook, and base member arrangement disclosed and/or suggested by Sato, which is specifically configured for connecting *external/portable* components to internal components of a garment so as to modify the garment disclosed and/or suggested by Giannini, which garment, according to Giannini, is intended to have an entirely internal system of switches/circuitry? There is no reasonable basis for concluding that one of ordinary skill in the art would think to make such a combination. Accordingly, the prior art references do not teach or suggest modifying the Giannini patent in view of the Sato patent and thus it is respectfully submitted that the Examiner has not established a *prima facie* case of obviousness with respect to claims 1 and 7 for at least this reason.

B. There Would Not Be A Reasonable Expectation Of Success In Modifying The Lead Wire Arrangement Suggested By The Giannini Patent To Adopt The Lead Wire Arrangement Of The Sato Patent.

Each prior art reference must be considered in its entirety, including those portions that would lead away from the claimed invention. M.P.E.P. § 2141.02. Both the Giannini patent and the Sato patent – when considered in their entireties as they must be – effectively teach away from the proposed combination. Clearly then, there would not be a reasonable expectation of success in modifying Giannini’s lead wire arrangement to adopt Sato’s lead wire arrangement.

As noted above with respect to the Giannini patent, one of the requirements associated with Giannini’s proposed lead wire arrangement is that it facilitates electrical communication among components mounted entirely within a garment. (col. 3, lns. 54-55). In order to satisfy this electrical interconnection requirement Giannini specifically teaches the use of leads (52a) and (52b) to connect conductive elements of a flexible switch entirely in the garment to other

components likewise entirely in the garment. To modify Giannini's lead wire arrangement so as to adopt a connecting arrangement (i.e., lead wires, metallic hooks, docking base, etc.) specifically configured for electrically connecting *external* components, e.g., audio components, to electrical components associated with a garment as required by Sato's invention, would be inconsistent with the teachings of Giannini and would defeat, a significant object of Giannini's invention, i.e., the object to provide a sound generating outer garment in which the circuitry for detecting bodily movements and the circuitry for producing musical sounds are *mounted entirely within the garment*. (col. 1, lns. 67-68 and col. 2, lns. 1-2). Accordingly, at least for this reason, it is respectfully submitted that when taken in their entirety, the cited references teach away from the modification suggested by the Examiner, and hence it is again respectfully submitted that the Examiner has failed to establish a *prima facie* case of obviousness.

C. The Prior Art References Do Not Teach Or Suggest All Of The Claim Limitations.

Even if it were proper to modify Giannini's lead wire arrangement in the manner suggested by the Examiner in view of the Sato patent, which modification Appellant(s) respectfully dispute, the resulting combination would not meet the terms of the present claimed invention. That is, as noted by the Examiner, the Giannini patent clearly "does not disclose the connecting means extending from the switch through a material fabric of the garment to [a removable] signaling device." (Final OA, part 3, p. 2). In addition, the Sato patent, which was cited by the Examiner for purportedly addressing this noted shortcoming of the Giannini patent, likewise fails to disclose and/or suggest, *inter alia*, the claimed connection arrangement of Appellant(s) pending application, i.e., connecting a activator/switch to a removable signaling device through a material fabric of a wearable garment. Rather, the Sato patent distinctly

discloses and/or suggests that an accessory component (8), e.g., a power source or an amplifier, associated with a garment, i.e., vest (1), be connected to a base member (6), which is provided in an accessible pocket of the vest (1), through metallic engaging members, i.e., hooks (2), and lead wires (9) so that when the vest (1) is worn and the hooks (2) are hooked, the power source (8) is switched on and connected to an audio component, i.e., a portable tape recorder (5), via the base member (6) and wires (9). It is respectfully submitted that connecting an accessory component or power source to a base member and/or connecting an audio component thereto is not the same as connecting a activator/switch to a removable signaling device.

The Sato patent also discloses and/or suggests that the base member (6) is connected to speakers (41, 42) by lead wires (101, 102) so that when a listener puts on the vest (1) and hooks the hooks (2), the accessory component (8) is connected to the base member (6) through the lead wires (9), the power source is switched on, and when the portable audio component (5) is docked with the base member (6) via a docking terminal (61) and operated, a sound source signal is supplied to speakers (41, 42) through lead wires (101, 102). It is respectfully submitted that docking an portable audio component with a base member and connecting the base member to speakers and/or to an accessory component/power source is not the same as connecting an activator/switch to a removable signaling device.

It follows then that there is no teaching, suggestion or disclosure anywhere in the references of record to provide “a connection means extending from [a] switch through a material fabric of [a] wearable garment to serve as a coupling to [a] removable signaling device”, as recited in present claim 1. Similarly, there is no teaching, suggestion or disclosure provided by the references of record relating to a method including, *inter alia*, a step of “coupling a

pressure-sensitive activator switch to [a] removable signaling device through a material fabric of a wearable garment”, as defined by present claim 7. It is by connecting the activator/switch to a removable signaling device that individuals are provided with readily accessible, easily operated and/or optimally located signaling means (e.g., emergency signaling means). Thus, as the cited references fail to disclose or suggest each and every element of Appellant(s) claimed invention, it is respectfully submitted that the Examiner has failed to establish a *prima facie* case of obviousness.

D. Claims 4 To 6, 9 And 10 Are Separately Patentable.

Notwithstanding the fact that claims 2 to 6 and claims 8 to 10, which respectively depend either directly or indirectly from claim 1 or claim 7, are patentable at least for the reasons outlined above, claims 4 to 6, 9 and 10 are separately patentable.

With regard first to claims 4 and 10, which claims depend either directly or indirectly from respective claims 1 and 7, the Examiner suggests that the Giannini patent discloses “two layers of material defining a *moisture-resistant* enclosure”. (emphasis added) (Final OA, part 3, p. 4). It is respectfully noted that the Giannini patent more correctly teaches “[a] flexible switch 50...[with] an outer cover 54...a flexible and conductive outer lamina or layer 56 and flexible and insulating outer lamina or layer 58...[and a] flexible resilient insulating cushion 60...between the outer layers 56 and 58.” (col. 4, lns. 56-61). Accordingly, it is respectfully submitted that the Giannini reference, actually does not specifically teach a moisture-resistant enclosure for a pressure-sensitive electrical activator switch, as claimed by claims 4 and 10. Rather, Giannini merely discloses and/or suggests the use of an outer cover and provides nothing with respect to the cover’s moisture-resistant characteristics/properties. In addition, the Sato

reference, which discloses and/or suggests an accessible kangaroo type pocket, clearly fails to overcome the noted shortcoming of the Giannini patent. Accordingly, as neither of the cited references, nor the combination thereof, suggest and/or disclose all of the required elements of claims 4 and 10, it is respectfully submitted that in furtherance of the reasons discussed above with respect to claims 1 and 7, the Examiner has not established a *prima facie* case of obviousness with respect to claims 4 and 10 for at least this additional reason.

With respect to claims 5 and 9, which claim depends directly from either claim 1 or claim 7, the Examiner, with reference to Fig. 1 of the Giannini patent, suggests that Giannini discloses “indicia on the outer surface of the garment”. (Final OA, part 3, p. 4). It is respectfully submitted that the Giannini patent does not, via Fig. 1, disclose and/or suggest indicia on the outer surface of a garment, but instead uses Fig. 1 to schematically demonstrate the positioning of the switch components (16-26) relative to the garment (10). This interpretation of what is shown in Fig. 1 is supported by Giannini’s specific teaching that the components, including switches (16-26), according to his invention, are “entirely within” the garment. (col. 3, lns. 54-55), and further, by the fact that there is no disclosure and/or suggestion regarding the need to provide indicia that enables a wearer to readily identify the location of a switch associated with the garment. Accordingly, it is respectfully submitted that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 5 and 9 at least for this reason as well as for the reasons previously discussed with respect to claims 1 and 7.

Finally, with respect to claim 6, which claim depends directly from claim 1, the Examiner, with reference again to Fig. 1 of the Giannini patent, suggests that Giannini discloses “receptacles on the outer surface of the garment configured for engaging supporting units


ancillary to transmitting electronic signals”. (Final OA, part 3, p. 4). It is respectfully submitted that the Giannini patent does not, via Fig. 1, suggest and/or disclose receptacles on the outer surface of a garment for engaging supporting units ancillary to transmitting electronic signals. Instead, Fig. 1 of the Giannini patent schematically shows (i) a suit (10) including a jacket (12) and pants (14), (ii) switch components (16-26), (iii) a main control circuit (28), and (iv) control switches (30). Moreover, although pants (14) are shown as having pockets, such pockets are not “on the outer surface of the garment” nor are they configured for “engaging” units ancillary to transmitting electronic signals. Accordingly, it is respectfully submitted that the Examiner has not established a *prima facie* case of obviousness with respect to claim (6) at least for this reason as well as for the reasons discussed above with respect to claim 1.

VIII. CONCLUSION

At least for the foregoing reasons, reversal of the Final Rejection of Claims 1-10 is warranted and such action is earnestly solicited.

Authorization is hereby given to charge our Deposit Account No. 14-1270 in the amount of \$330 for payment of the fee under 37 C.F.R. §1.17(c). No additional fee is believed to be required in connection with this filing. However, if an additional fee is required, or otherwise if necessary to cover any deficiency in fees already paid, authorization is hereby given to charge our deposit account no. 14-1270.

Respectfully submitted,

By 
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VIII. APPENDIX

1. (previously presented) A portable signal activator comprising:
a wearable garment having a body structure;
a pressure-sensitive electrical activator switch mounted to the body structure of said garment and capable of activating a removable signaling device; and,
a connection means extending from the electrical activator switch through a material fabric of the wearable garment to serve as a coupling to the removable signaling device.
2. (Original) The portable signal activator of Claim 1, wherein said body structure of said garment includes at least a portion formed of two layers of material.
3. (Original) The portable signal activator of Claim 2, wherein said pressure-sensitive electrical activator switch is enclosed between said two layers of material of said body structure.
4. (Original) The portable signal activator of Claim 3, wherein said two layers of material define a moisture-resistant enclosure for said pressure-sensitive electrical activator switch.
5. (Original) The portable signal activator of claim 1, further comprising indicia on the outer surface of said wearable garment identifying the location of said activator switch.

6. (Original) The portable signal activator of claim 1, further comprising receptacles on the outer surface of said garment configured for engaging and supporting units ancillary to transmitting electronic signals.

7. (previously presented) A method for permitting a person to activate a portable removable signaling device conveniently, said method comprising the steps of:

coupling a pressure-sensitive activator switch to said removable signaling device through a material fabric of a wearable garment;

mounting both the removable signaling device and said switch to a wearable garment;

dressing said person in said wearable garment; and,

positioning said switch on said garment within easy reach of said person wearing said garment.

8. (Original) The method of Claim 7, further comprising the step of enclosing said activator switch between two layers of material.

9. (Original) The method of Claim 7, wherein said garment bears tangible indicia on the outer surface thereof to identify the location of said switch, readily, to said wearer.

10. (Original) The method of Claim 7, further comprising the step of protecting said switch from ambient conditions by enclosing it in a moisture resistant enclosure on said garment.

File History:

Application Filed: October 26, 2001

1st Office Action: March 26, 2003 (rejected claims 1-10 under 35 USC 102)

1st Amendment: June 24, 2003 (amended claims 1 and 7)

Final Office Action: August 25, 2003 (rejected claims 1-10 on new grounds under 35 USC 103)

Response to Final: October 13, 2003 (remarks only, no amendments)

Advisory Action: November 13, 2003

Request for Continued Examination (RCE): November 19, 2003

Notice of Non-compliant amendment: December 8, 2003

Response to Notice of Non-compliant amendment: December 11, 2003

1st RCE Office Action: February 23, 2004 (maintained rejection claims 1-10 under 35 USC 103)

1st RCE Amendment: May 24, 2004 (claims 1 and 7 amended)

RCE Final Office Action: August 10, 2004

Response to RCE Final: September 29, 2004 (remarks only, no amendments)

Notice of Appeal: November 5, 2004

Advisory Action: November 23, 2004